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In the Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STATES OF AMERICA, PETITIONER

v.

RAYMOND J. PLACE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Whether the Fourth Amendment prohibits police from detaining personal luggage reasonably suspected of containing narcotics for the purpose of arranging exposure to a narcotics detection dog.

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The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-29a) is reported at 660 F.2d 44. The opinion of the district court (App. D, *infra*, 34a-57a) is reported at 498 F. Supp. 1217.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 30a-31a), was entered on September 16, 1981.

A petition for rehearing was denied on November 30, 1981 (App. C, *infra*, 32a-33a). On January 20, 1982, Justice Marshall extended the time within which to file a petition for a writ of certiorari to and including February 28, 1982 (App. E, *infra*, 58a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following the denial of his suppression motion, respondent pled guilty in the United States District Court for the Eastern District of New York to possession of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1).[1] He was sentenced to three years' imprisonment. Finding that the temporary detention of respondent's suitcase in order to permit its exposure to a narcotics detection dog violated the Fourth Amendment, the court of appeals reversed.

1. a. The evidence adduced at the suppression hearing is set forth in the opinions of the courts below (App. A, *infra*, 2a-6a; App. D, *infra*, 34a-41a). It showed that on Friday morning, August 17, 1979, two Dade County, Florida, narcotics investigators, Detectives McGavock and Facchiano, on duty at the Miami International Airport were observing passengers standing in line at the National Airlines ticket counter (App. D, *infra*, 34a). Their attention was attracted to respondent, who, while standing in the ticket line, appeared to be nervously scanning the area and closely scrutinizing everyone entering or seated in the lobby (*id.* at 35a). In particular, respondent was observed staring at Detective McGavock

[1] Respondent entered the plea of guilty reserving the right to appeal the denial of the motion to suppress (App. A, *infra*, 2a).

as the officer conferred with Detective Facchiano and moved around the lobby area, although respondent would look away when Detective McGavock looked at him (*ibid.*).

After respondent purchased his ticket with cash and checked two suitcases, Detective Facchiano went to the baggage loading area to examine the identification on the luggage, and Detective McGavock followed respondent. He observed respondent walk toward the concourse gate for his flight and then suddenly return toward the ticket counter and walk a complete circle around the lobby area while continuously looking back over his shoulder (App. D, *infra*, 35a-36a). Respondent then walked toward the concourse gate again, stopping for less than a minute in a restroom. Detective Facchiano then rejoined Detective McGavock after ascertaining that the name on respondent's bags appeared to be Place (*id.* at 36a).

When respondent reached the security gate in the boarding area, Detective Facchiano approached him, displayed his credentials, and, after explaining that there was a serious contraband problem at the airport, asked respondent if he would show the officers some identification and his airline ticket. Respondent began to perspire heavily and handed the detective his ticket and driver's license, which identified him as Raymond Place. Detective Facchiano then asked respondent for consent to examine the contents of the suitcases respondent had checked. Respondent replied that he had no objection. Nevertheless, because respondent's flight bound for New York's LaGuardia Airport was due to depart shortly, the officers decided not to search the luggage and terminated the discussion (see Tr. 28, 74).[2] As respondent proceeded to the

[2] "Tr." refers to the transcript of the suppression hearing.

security gate, he turned and remarked that he had recognized the detectives as police officers when he first saw them in the lobby (App. D, *infra*, 36a-37a).

Detective McGavock then decided to go to the baggage loading area to examine respondent's luggage himself. He noticed that the identification labels on the two suitcases bore different street addresses in Hallandale, Florida. After copying down the addresses and obtaining the call-back telephone number that respondent had given with his reservation, Detective McGavock telephoned the Hallandale police department. They informed him that neither of the street numbers on respondent's suitcases existed and that the telephone number was for a residence at a different address on the same street as the addresses on the baggage tags. Detective McGavock then telephoned DEA Special Agent Gerard Whitmore in New York and informed him of what had transpired, giving him a description of respondent and his luggage (App. D, *infra*, 37a-38a).

b. Agent Whitmore and his partner, Agent Iglesias, recognized respondent as he deplaned upon arrival at LaGuardia Airport. While walking to the baggage area, respondent repeatedly looked behind him, stopping once to look at the persons around him. At the baggage claim area, the agents observed respondent standing just outside the entrance looking at every person in the area. When the luggage arrived, respondent entered and picked up his bags. When Agent Whitmore began to follow respondent down a corridor, respondent abruptly stopped, turned, and stared at the agent (App. D, *infra*, 38a-39a).

After respondent made a telephone call, apparently to a limousine service, the agents approached him and Agent Whitmore identified himself to respondent

as a federal narcotics agent. Respondent immediately remarked, "I knew you guys were cops. I spotted [Agent Iglesias] as soon as I got out of the plane." The agent explained that, based partly on information relayed by the Dade County police, he suspected respondent of carrying narcotics. Respondent was asked whether the suitcases he was carrying were his. He replied that they were and added that a gang of police had surrounded him in the Miami Airport, humiliated him, and searched both his person and his luggage. Agent Whitmore then responded that he had been informed that respondent had not been searched at the Miami Airport, but respondent repeated his assertion that he had been searched. The agent then asked to see respondent's identification and requested permission to examine the contents of the suitcases, explaining that in the absence of consent the luggage could not be searched without a warrant (Tr. 87-88; App. D, *infra*, 39a-40a).

Respondent declined to consent to a search and inquired whether he was under arrest or was free to leave the airport with his luggage. Agent Whitmore told respondent that he was not under arrest and was free to leave, but his luggage would be taken to a federal judge to make a determination as to whether a search warrant should issue. He also informed respondent that he could accompany them on the trip. Respondent declined, however, explaining that he would be unable to do so because of "pressing engagements" (Tr. 89). Agent Whitmore gave respondent a phone number where the agent could be reached at any time so that respondent could arrange for the return of his luggage (Tr. 93), and the agents

loaded the luggage into a car and left the airport (App. D, *infra*, 40a-41a).[3]

The agents then drove with the bags to a Customs Bureau dog handler facility at Kennedy Airport, leaving at about 4:10 p.m. and arriving approximately 35 minutes later (Tr. 96-97). Respondent's bags were placed among other parcels for exposure to the dog and, at approximately 5:30 or 5:40 p.m., the dog signaled the presence of drugs in the smaller bag but reacted ambiguously toward the larger bag. Thereafter, a United States magistrate issued a search warrant for the smaller bag. Agent Whitmore then opened the bag and found 1,125 grams of cocaine, 25 LSD tablets, and a quantity of marijuana (App. D, *infra*, 41a; Tr. 97-101).

2. Prior to trial, respondent moved to suppress the evidence found in the smaller suitcase. The district court denied the motion, rejecting the claim that the temporary detention of the suitcase violated the Fourth Amendment. Relying heavily on *United States* v. *Klein*, 626 F.2d 22 (7th Cir. 1980), the court held that reasonable suspicion that luggage contains contraband justifies a limited detention to obtain a dog sniff of the sort involved here (App. D, *infra*, 52a-57a). Finding that the agents' observations and respondent's behavior during questioning "were sufficient to raise in the agents' mind a reasonable suspicion to believe that the bags contained narcotics,"[4]

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[3] Before the agents left, respondent twice approached Agent Whitmore and inquired whether something could be "arrange[d]" or "fix[ed] up" so that he could leave the airport with his luggage (App. D, *infra*, 40a; Tr. 91, 94).

[4] The district court noted that, in its view, the facts known to or observed by the agents were sufficient to constitute probable cause (App. D, *infra*, 57a n.7).

the court concluded that respondent's "Fourth Amendment rights were not violated by the detention of the bags by the DEA Agents" (*id.* at 57a).[5]

3. A divided court of appeals reversed (App. A, *infra*, 1a-29a). The court assumed that the DEA agents' observations of respondent's behavior and the information they obtained from the Dade County detectives justified a reasonable suspicion that he was a drug courier,[6] but it concluded that "the prolonged seizure of [respondent's] baggage went far beyond a mere investigative stop and amounted to a violation of his Fourth Amendment rights" (*id.* at 14a).

The court of appeals first examined decisions of this Court concerning investigatory detentions of persons based on *Terry* v. *Ohio*, 392 U.S. 1 (1968). Relying on *Dunaway* v. *New York*, 442 U.S. 200, 212-213 (1979), and *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 880 (1975), the court observed that an

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[5] The court also rejected respondent's arguments that his Fourth Amendment rights were violated by the approaches made to him by the police in both Miami and New York. It held that both encounters were supported by reasonable suspicion that respondent was engaged in unlawful activity and gave a detailed enumeration of the factors that warranted the suspicion in each instance (App. D, *infra*, 47a-52a). The court also rejected respondent's claim that the dog sniff was arranged so as to draw attention to his suitcases and hence was unreliable (*id.* at 57a).

[6] The court of appeals rejected the district court's view that the detention of respondent's luggage was supported by probable cause (App. A, *infra*, 11a-12a). While we do not acquiesce in the correctness of that conclusion, especially in light of respondent's apparent bribe attempt (see note 3, *supra*) and his retreat from his earlier assertion of ownership of the smaller bag (see Tr. 92), we do not ask this Court to review the fact-bound question of the existence of probable cause, but assume for present purposes that the bags were detained on the basis of reasonable suspicion falling short of probable cause.

investigative stop of a suspect "has been upheld only where it lasted for only a few minutes or less and was limited to the locale in which the suspect was found" (App. A, *infra*, 14a). The court then rejected the notion that the standard of reasonableness applicable to the detention of baggage could differ from that applicable to the detention of a person, stating (*id.* at 16a):

> [T]he Fourth Amendment does not draw any distinction between an unlawful seizure of a person and the similar seizure of his property. In both cases there is an infringement of the person's freedom of action. Police custody of his person precludes him from freely moving about. Police custody of his baggage deprives him of the use of it and its contents. Both create uncertainty and anxiety on his part.

Proceeding from this premise, the court concluded that, because a detention of respondent's person for the length of time involved here and his removal to a different location for the purpose of determining whether he was carrying narcotics would have violated the Fourth Amendment in the absence of probable cause (*ibid.*), the detention by the police of his luggage in order to bring it to a drug detection dog "cannot reasonably be characterized as a *Terry*-type 'investigative stop'" (*id.* at 18a). Rather, it "amounted to a seizure without probable cause of [respondent's] effects in violation of his Fourth Amendment rights" (*ibid.*).[7]

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[7] The court also stated that the Fourth Amendment violation was exacerbated by the agents' statement that they were taking the bags to a federal judge to get a search warrant when they, in fact, first took them to another airport for exposure to a drug detection dog. Moreover, because the agents

The court further stated that *United States* v. *Van Leeuwen*, 397 U.S. 249 (1970), which involved the detention by postal officials for further investigation of mail packages suspected of containing contraband, was of no relevance to this case because the detention in *Van Leeuwen* occurred only after the owner of the parcels had voluntarily deposited them with the Postal Service. The court of appeals concluded that *Van Leeuwen* involved "at most a minimal or technical interference" with an individual's rights as opposed to the "substantial intrusion" involved here (App. A, *infra*, 20a). Accordingly, the court found "unpersuasive" three decisions in other circuits upholding the constitutionality of similar temporary baggage detentions for the purpose of performing a dog sniff test (*id.* at 20a-21a).[8]

Judge Oakes filed a concurring opinion (App. A, *infra*, 22a-23a) in which he asserted his view that seizures based on less than probable cause should be permissible only when made pursuant to "reasonable rules or regulations adopted by the appropriate gov-

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did not specify when the luggage would be returned, the court suggested that respondent could have understood that it would not be returned to him for "weeks." The court characterized this lack of disclosure as "not unlike the use of Writs of Assistance which led to the adoption of the Fourth Amendment" (App. A, *infra*, 18a-19a).

[8] The court also asserted that those cases were factually distinguishable because it did not appear in them (1) that the duration of the detention was as long as it was here; (2) that the baggage was removed from the airport to another location; (3) that the agents concealed their plans for investigation of the baggage; and (4) that the agents indicated that the baggage detention would be of indefinite duration (App. A, *infra*, 21a).

ernmental authority and subjected to appropriate judicial review" (*id.* at 22a).

Judge Kaufman dissented (App. A, *infra*, 23a-28a), concluding that "the temporary detention of [respondent's] luggage was a reasonable 'stop' within the meaning of *Terry*" (*id.* at 28a). He explained that the Fourth Amendment's prohibition against "unreasonable" searches and seizures requires that "the government interest in deterring criminal conduct must be balanced against the individual's constitutionally protected privacy" (*id.* at 24a). Here, the "public interest in holding [respondent's] suitcase for a 'sniff test' was compelling—detection of an individual who trafficks in drugs" (*id.* at 24a-25a), and the agents' observations "reveal[ed] such a strong suspicion of illegal activity that the agents would have been remiss in their duty had they not detained [respondent's] bags" (*id.* at 25a). Judge Kaufman emphasized the limited nature of the intrusion in that respondent himself was not detained, nor did the agents invade his privacy interest in the contents of his suitcases prior to securing a warrant (*id.* at 25a-27a). He also stated that the principles of *Van Leeuwen* were fully applicable here and that, contrary to the majority's assertion, the baggage detention cases in other circuits were not distinguishable (*id.* at 27a-28a & n.2).

REASONS FOR GRANTING THE PETITION

This case presents an important and recurring question concerning the restrictions the Fourth Amendment places on police action when there exists reasonable suspicion that an individual's luggage contains contraband. The court of appeals has held that the police may not detain the luggage temporarily for

the purpose of pursuing a specific course of investigation calculated to confirm or dispel that suspicion; rather, the police must allow the individual to leave with his baggage, with the almost certain result that any contraband contained in the baggage will be distributed or destroyed. See App. A, *infra*, 25a (Kaufman, J., dissenting). This decision directly conflicts with the holdings of three other courts of appeals and is at odds with more general principles established by decisions of this Court. If permitted to stand, it will have a serious deleterious effect on the efforts of police to stem the illegal traffic in narcotics.

1. Three different courts of appeals, in cases also arising out of DEA airport encounters with suspected drug couriers, have held that agents do not violate the Fourth Amendment when they temporarily detain luggage reasonably suspected of containing narcotics for the purpose of obtaining a dog sniff. In *United States* v. *Klein*, 626 F.2d 22 (7th Cir. 1980), DEA agents developed reasonable suspicion that two deplaning passengers were carrying contraband in their suitcases. One of the agents informed the suspects that they were free to leave, but that their suitcases would be detained while the agents attempted to get a search warrant. The agents first awaited the arrival of a drug detection dog and then obtained a search warrant after the dog alerted to the presence of drugs in the luggage. The court held that the agents' actions adequately protected the suspects' privacy interest in their luggage and that, given their reasonable suspicions, "they would have been remiss in not detaining the bags for further investigation." 626 F.2d at 26.

The *Klein* court relied heavily on this Court's decision in *United States* v. *Van Leeuwen*, 397 U.S. 249

(1970), as establishing the general principle that the Fourth Amendment permits the temporary detention of effects for further investigation when police reasonably believe that those effects contain contraband. In *Van Leeuwen*, two packages sent through the United States mails aroused the suspicion of postal officials. The postal officials detained the packages for a day while police pursued certain lines of inquiry. The information obtained during this period was used to obtain a search warrant, and contraband was discovered in the packages.

A unanimous Court held that the detention did not violate the Fourth Amendment. The Court explained that the suspicious circumstances justified the detention pending further investigation; indeed, because "[t]he only thing done * * * on the basis of suspicion was detention of the packages," the *Van Leeuwen* Court recognized that it did not have to go as far as the Court had gone in *Terry* v. *Ohio*, 392 U.S. 1 (1968), in order to conclude that the detention involved "no possible invasion" of the Fourth Amendment protection "against 'unreasonable searches and seizures'" (397 U.S. at 252). The *Van Leeuwen* Court emphasized that "[t]he significant Fourth Amendment interest was in the privacy of this first class mail; and that privacy was not disturbed or invaded until the approval of the magistrate was obtained" (*id.* at 253). Thus, although the Court recognized that "detention of mail could at some point become an unreasonable seizure of 'papers' or 'effects' within the meaning of the Fourth Amendment" (*id.* at 252), it concluded that "[n]o interest protected by the Fourth Amendment was invaded by forwarding the packages the following day rather than the day when they were deposited" (*id.* at 253).

Both the First and Ninth Circuits have followed *Klein* in applying the principles of *Van Leeuwen* to uphold the validity of temporary detentions of baggage in order to arrange a dog sniff. In *United States* v. *Viegas*, 639 F.2d 42 (1st Cir. 1981), cert. denied, No. 80-1344 (May 4, 1981), DEA agents reasonably suspected that an arriving passenger was carrying drugs in his suitcase. The agents sought to expose the suitcase immediately to a drug detection dog, to which the defendant agreed, but they learned that a dog was unavailable at that time. The agents then told the defendant that he was free to leave, but that his bag would be detained. The agents later obtained a search warrant and discovered cocaine in the suitcase. The court relied on *Klein* and *Van Leeuwen* in concluding that the agents' reasonable suspicion justified the temporary detention of the luggage, even though the detention undoubtedly inconvenienced the defendant. 639 F.2d at 45. The First Circuit subsequently reaffirmed this holding in another case in which luggage was detained on reasonable suspicion pending arrival of a dog, while the suspect was permitted to leave. *United States* v. *West*, 651 F.2d 71 (1981), petition for cert. pending, No. 81-307.

Similiarly, in *United States* v. *Martell*, 654 F.2d 1356 (9th Cir. 1981), DEA agents stopped the defendants upon their arrival at the San Diego airport on the basis of a reasonable suspicion that they were carrying contraband. Approximately 20 minutes later, the defendants and the luggage they were carrying were taken to a police office, where a narcotics detection dog alerted to the presence of narcotics in the luggage. The defendants were detained until a search warrant was procured, and a search of the bags revealed a large quantity of cocaine.

Relying on *Van Leeuwen*, *Klein*, and *Viegas*, the court of appeals held that the luggage detention was lawful even if detention of the defendants themselves violated the Fourth Amendment. 654 F.2d at 1359-1363. The court explained (*id.* at 1359; footnote omitted):

> In our view, * * * *Terry* and *Dunaway* and their progeny relate to detention of persons and not inanimate objects. The rationale relied upon by the Court in those cases is inappropriate as applied to "things," a seizure of which constitutes a substantially less serious intrusion upon rights of the individual.
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> * * * * *
>
> We look then to the standard of reasonableness as required by the fourth amendment in the seizure and detention of inanimate objects.

The decision in the instant case squarely conflicts with these decisions of three circuits. While the court below suggested some bases on which the cases could be distinguished factually (see note 8, *supra*), those distinctions do not diminish the conflict. Most of the grounds for distinction identified by the majority below are simply irrelevant to the legal issue presented by all of the cases. As Judge Kaufman pointed out (App. A, *infra*, 27a n.2), because the alleged infringement of respondent's rights was the dispossession of the luggage, it is of no consequence that the agents took the luggage to the dog at Kennedy Airport instead of bringing the dog from Kennedy to LaGuardia. Nor is the agents' alleged failure to disclose fully to respondent their intentions with respect to the luggage relevant to the issue here, because it is undisputed that the detention was against respondent's wishes. Moreover, the factual foundation of the majority's assertion that this non-

disclosure was unique to this case is erroneous. The agents' statement that they were detaining the luggage pending application for a search warrant appears to be almost identical to the explanation given by the agent in *Klein*. See 626 F.2d at 25. And the agents here gave respondent no reason to believe that the detention of his luggage would be indefinite; the agents informed him that the luggage would be returned if the magistrate refused to issue a search warrant (Tr. 89).

The majority below was correct in suggesting that the length of the detention could serve as a valid factual basis for distinguishing among otherwise similar cases. The length of a detention is an important factor to be considered in assessing its reasonableness. See *Michigan* v. *Summers*, No. 79-1794 (June 22, 1981), slip op. 8-9 n.12. But the length of the detention involved here until the sniff test could be performed, about 90 minutes, was not significantly different from those involved in the cases the majority sought to distinguish. While the opinion in *Klein* does not indicate how long the detention lasted, in *West* the bag was detained for about an hour before the dog arrived. *United States* v. *West*, 495 F. Supp. 871, 873 (D. Mass. 1980). And in *Viegas*, the record indicated that the agents were informed that no dog would be available for four hours when they decided to detain the bag. See No. 80-1344 Br. in Opp. 3.[9] Thus, it is apparent that there is no sound basis for distinguishing the instant case from those cases in other circuits that have upheld a temporary detention of luggage based on reasonable suspicion. Rather, the different result

[9] A copy of the government's response in No. 80-1344 is being furnished to respondent.

reached here can be ascribed exclusively to the majority's view that those decisions are incorrect. The decision below thus creates a square conflict among the circuits.

Resolution of this conflict is necessary both to clarify an important question of Fourth Amendment law and, more specifically, to guide DEA agents in the performance of their duties. The DEA's airport drug courier program is an integral part of a highly specialized law enforcement program designed to "intercept drug couriers transporting narcotics between major drug sources and distribution centers in the United States." *United States* v. *Mendenhall*, 446 U.S. 544, 562 (1980) (opinion of Powell, J.) The program involves the use of experienced agents specially trained to detect drug couriers. In some instances, these agents develop a reasonable suspicion that an individual is carrying narcotics in his luggage, and the agents are aware that a specific line of inquiry of limited duration may confirm or dispel that suspicion. It is important that agents know whether they are permitted to detain a suspect's luggage in order to conduct such an inquiry or whether they must allow the suspect to leave with his luggage, with the result that any contraband contained therein will be delivered successfully or destroyed. In the words of Judge Kaufman, the decision below places an "unwarranted hurdle[] * * * in the path of agents engaged in the difficult task of controlling the heavy traffic in drugs" (App. A, *infra*, 28a).

2. Apart from its impact in the specific context of drug enforcement, the decision below also incorrectly analyzes certain broad principles of Fourth Amendment law. The panel majority suggests that the same standard applies to seizures as to searches, namely, in the absence of exceptional circumstances they are

per se unreasonable unless authorized by a warrant based upon probable cause (App. A, *infra*, 6a-7a). But it is well established that, because the principal Fourth Amendment interest in a package is in the privacy of its contents, a temporary seizure of a container may be effected in order to preserve the status quo even though a search would not be permissible. This is clear from *Van Leeuwen*, where the Court repeatedly emphasized that the detention did not violate the Fourth Amendment because the "significant Fourth Amendment interest" in the privacy of the mail was safeguarded. 397 U.S. at 253. Subsequent decisions reconfirm that Fourth Amendment standards for assessing the reasonableness of seizures are less stringent than those for searches. See *Payton* v. *New York*, 445 U.S. 573, 587 (1980); *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 354 (1977). And, of course, police may temporarily detain unopened luggage while seeking a search warrant. See *Arkansas* v. *Sanders*, 442 U.S. 753, 764 n.12 (1979); *United States* v. *Chadwick*, 433 U.S. 1, 13-14 n.8 (1977).

More important, the court below erroneously held that the Fourth Amendment draws no distinction between the seizure of a person and the similar seizure of his property (App. A, *infra*, 16a). But the touchstone of Fourth Amendment analysis is the reasonableness of the police conduct, which can be assessed intelligently only by considering the extent of the intrusion. In the context of the legality of a temporary detention, this determination must be made by balancing "the degree to which the seizure advances the public interest" against "the severity of the interference with individual liberty." *Brown* v. *Texas*, 443 U.S. 47, 51 (1979). See also *United States* v. *Mendenhall*, *supra*, 446 U.S. at 561 (opinion of Powell, J.). It is clear from the decisions of this Court that

the constitutional duration limit of a detention based on reasonable suspicion will vary depending upon the interest invaded by the detention. In *Van Leeuwen* the Court held that a detention of mail for a day clearly was justified by reasonable suspicion, yet there can be little doubt that even a substantially shorter detention of a person would be invalid in the absence of probable cause. See, *e.g.*, *Dunaway* v. *New York*, 442 U.S. 200 (1979). While we do not necessarily take issue with the conclusion of the court below that the detention of respondent's luggage was a greater intrusion than the detention of the mail in *Van Leeuwen* (see App. A, *infra*, 20a), we suggest that it is even clearer that the temporary detention of respondent's luggage was a significantly lesser interference with his individual liberty than a detention of his person would have been.[10] Accordingly, reasonable suspicion can support a detention of *property* for a period of time that exceeds the maximum period for which a *person* could be detained given the same degree of suspicion. In this case, the limited inconvenience to respondent of having his luggage detained for 90 minutes was justified by the facts that gave rise to the agents' suspicion that the luggage contained narcotics.

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[10] The court below suggests that the temporary detention of an individual's suitcase may be catastrophic if it contains medicine essential for the treatment of a heart condition. In such circumstances, of course, it would be unreasonable, and therefore violative of the Fourth Amendment, for the police to refuse access to the seized luggage for the purpose of removing the necessary items. Cf. *United States* v. *Benjamin*, 637 F.2d 1297, 1299 (7th Cir. 1981) (suspect permitted to remove certain personal effects from detained briefcase).

CONCLUSION

The petition for a writ of certiorari should be granted.

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